

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

Case No. 1:14-cv-03183-JPH

KAREN DIXON,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 15, 20. Attorney D. James Tree represents plaintiff (Dixon). Special Assistant United States Attorney Benjamin Groebner represents defendant (Commissioner). Plaintiff filed a reply. ECF No. 21. The parties consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the

1 briefs filed by the parties, the court **grants** defendant's motion for summary  
2 judgment, ECF No. 20.

### 3 **JURISDICTION**

4 Dixon protectively applied for disability insurance benefits (DIB) and  
5 supplemental security income disability benefits (SSI) on August 17, 2010, alleging  
6 onset beginning July 1, 2005 (Tr. 216-31, 232-41 ). The claims were denied initially  
7 and on reconsideration (Tr. 130-144, 147-158). On January 23, 2013, Administrative  
8 Law Judge (ALJ) Tom L. Morris held a hearing. Plaintiff, represented by counsel,  
9 and a vocational expert testified (Tr. 42-83). On March 29, 2013, the ALJ issued an  
10 unfavorable decision (Tr. 21-34). The Appeals Council denied review on September  
11 26, 2014 (Tr. 1-5), making the ALJ's decision final. On December 1, 2014, plaintiff  
12 filed this appeal pursuant to 42 U.S.C. §§ 405(g). ECF No. 1, 4.

### 13 **STATEMENT OF FACTS**

14 The facts have been presented in the administrative hearing transcript, the  
15 ALJ's decision and the parties' briefs. They are only briefly summarized here and  
16 throughout this order as necessary to explain the Court's decision.

17 Plaintiff was 45 years old when she applied for benefits and 47 at the hearing.  
18 She graduated from high school and earned a two-year degree in chemical  
19 dependency studies. She has worked as a bookkeeper, administrative clerk and  
20 billing clerk. She last worked in 2003 and had an unsuccessful work attempt in 2005.

1 Plaintiff lives with her mother. Activities include reading, writing, cooking, driving  
2 and using a computer. She underwent spinal fusion surgery in March 2012. She  
3 alleges physical and mental limitations (Tr. 45, 47, 67, 72, 252, 260, 370, 623-34).

#### 4 **SEQUENTIAL EVALUATION PROCESS**

5 The Social Security Act (the Act) defines disability as the “inability to engage  
6 in any substantial gainful activity by reason of any medically determinable physical  
7 or mental impairment which can be expected to result in death or which has lasted or  
8 can be expected to last for a continuous period of not less than twelve months.” 42  
9 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall  
10 be determined to be under a disability only if any impairments are of such severity  
11 that a plaintiff is not only unable to do previous work but cannot, considering  
12 plaintiff’s age, education and work experiences, engage in any other substantial  
13 work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
14 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
15 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

16 The Commissioner has established a five-step sequential evaluation process  
17 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
18 one determines if the person is engaged in substantial gainful activities. If so,  
19 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
20 decision maker proceeds to step two, which determines whether plaintiff has a

1 medially severe impairment or combination of impairments. 20 C.F.R. §§  
2 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

3 If plaintiff does not have a severe impairment or combination of impairments,  
4 the disability claim is denied. If the impairment is severe, the evaluation proceeds to  
5 the third step, which compares plaintiff's impairment with a number of listed  
6 impairments acknowledged by the Commissioner to be so severe as to preclude  
7 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20  
8 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed  
9 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is  
10 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth  
11 step, which determines whether the impairment prevents plaintiff from performing  
12 work which was performed in the past. If a plaintiff is able to perform previous work  
13 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),  
14 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is  
15 considered. If plaintiff cannot perform past relevant work, the fifth and final step in  
16 the process determines whether plaintiff is able to perform other work in the national  
17 economy in view of plaintiff's residual functional capacity, age, education and past  
18 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*  
19 *Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon plaintiff to establish a *prima facie* case

1 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir.  
2 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
3 met once plaintiff establishes that a mental or physical impairment prevents the  
4 performance of previous work. The burden then shifts, at step five, to the  
5 Commissioner to show that (1) plaintiff can perform other substantial gainful  
6 activity and (2) a “significant number of jobs exist in the national economy” which  
7 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

#### 8 **STANDARD OF REVIEW**

9 Congress has provided a limited scope of judicial review of a Commissioner’s  
10 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
11 made through an ALJ, when the determination is not based on legal error and is  
12 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
13 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). “The [Commissioner’s]  
14 determination that a plaintiff is not disabled will be upheld if the findings of fact are  
15 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir.  
16 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,  
17 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9<sup>th</sup> Cir. 1975), but less than a  
18 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9<sup>th</sup> Cir. 1989).  
19 Substantial evidence “means such evidence as a reasonable mind might accept as  
20 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401

1 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]  
2 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,  
3 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers the record as a  
4 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*  
5 *v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,  
6 526 (9<sup>th</sup> Cir. 1980)).

7 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence.  
8 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
9 interpretation, the Court may not substitute its judgment for that of the  
10 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
11 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
12 set aside if the proper legal standards were not applied in weighing the evidence and  
13 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
14 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
15 administrative findings, or if there is conflicting evidence that will support a finding  
16 of either disability or nondisability, the finding of the Commissioner is conclusive.  
17 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

### 18 **ALJ’S FINDINGS**

19 The ALJ found Dixon was insured through March 30, 2006 (Tr. 21, 23). At  
20 step one ALJ Morris found Dixon did not work at SGA levels after onset (Tr. 23).

1 At steps two and three, he found Dixon suffers from degenerative disc disease status  
2 post L5-S1 fusion, an impairment that is severe but does not meet or medically equal  
3 a Listed impairment (Tr. 23, 26). The ALJ found Dixon less than fully credible (Tr.  
4 27-32). He found she is able to perform a range of light work (Tr. 26). At step four,  
5 relying on a vocational expert, the ALJ found Dixon is able to perform her past  
6 relevant work as an administrative clerk (Tr. 32). Alternatively, at step five, again  
7 relying on a VE, the ALJ found Dixon can perform other jobs, such as small  
8 product assembler inspector and hand packager and housekeeper/cleaner (Tr. 33-34).  
9 Accordingly, the ALJ found Dixon is not disabled as defined by the Act (Tr. 34).

## 10 ISSUES

11 Dixon alleges the ALJ erred when he evaluated the medical evidence and  
12 assessed credibility. She alleges the requirements of the credit-as-true rule are  
13 satisfied and the case should be remanded for payment of benefits ECF No. 15 at 8;  
14 21 at 1-10. The Commissioner responds that the ALJ's findings are factually  
15 supported and free of harmful legal error. She asks the court to affirm. ECF No. 20  
16 at 2.

## 17 DISCUSSION

### 18 *A. Credibility*

19 Dixon alleges the ALJ's credibility assessment is not properly supported. ECF  
20 No. 15 at 9-15.

1 When presented with conflicting medical opinions, the ALJ must determine  
2 credibility and resolve the conflict. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
3 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's credibility findings must be  
4 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup>  
5 Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for  
6 rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*,  
7 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General findings are insufficient: rather the ALJ  
8 must identify what testimony is not credible and what evidence undermines the  
9 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918  
10 (9<sup>th</sup> Cir. 1993).

11 The ALJ's finding is fully supported.

12 Plaintiff alleges she is unable to work because of back pain, depression and  
13 anxiety. The ALJ is correct that the medical record contradicts claimed disabling  
14 limitations.

15 Before back surgery plaintiff had two injections to relieve back pain. In March  
16 2011 examining physician James Opara, M.D., opined plaintiff could stand and walk  
17 a total of two hours in an eight hour day and sitting was unlimited. She  
18 underwent spinal fusion surgery in March 2012. [She was insured for DIB purposes  
19 through March 30, 2006.] Six weeks later she reported she had absolutely no lower  
20 extremity pain or weakness, only minimal residual lower lumbar discomfort. She has



1 been active every day. In October 2012 she told her neurosurgeon's office the  
2 surgery results in essence have "given her back her life." She is now back doing  
3 many activities she was unable to do before the surgery. At the hearing plaintiff  
4 testified she does not take pain medication (Tr. 29, 62, 341, 362, 453, 551, 623-24,  
5 627, 693).

6 Daily activities are inconsistent with the limitations alleged. Plaintiff says she  
7 uses a computer to check email and do research, drives, cooks, shops, takes care of  
8 her dog and writes. She has helped her mother who has a serious health problem,  
9 including running errands for her. She has taken her daughter in law to work and  
10 picked her up, at the same time she was taking her grandchildren to school and  
11 attending college. She has cared for her grandchildren. She talks to a friend daily.  
12 She attended college full time from 2009 until 2012 when she earned a two year  
13 degree. This is inconsistent with Plaintiff's reports that depression makes her unable  
14 to get out of bed (Tr. 25, 60, 64, 66, 273, 275-76, 313, 336-37, 356, 369, 372, 434,  
15 532).

16 The ALJ considered plaintiff's activities inconsistent with claimed physical  
17 limitations. In July 2008 plaintiff reported she was carrying a heavy object while  
18 moving to another residence. In March 2011 she reported she could sit comfortably  
19 for two to three hours and drive or ride in a car for about three hours and lift or carry  
20

1 ten pounds. She also reported she has good computer skills and can be on the  
2 computer for three hours (Tr. 27, 356, 360, 451).

3 In April 2010 treating physician Venugopal Bellum, M.D., notes plaintiff has  
4 never had physical therapy and takes no pain medication (Tr. 436). Following back  
5 surgery plaintiff has received conservative treatment or no treatment. She does not  
6 take any pain medication. She has failed to follow recommended medical treatment,  
7 including take medications as prescribed, without adequate explanation. She has had  
8 no mental health treatment since 2010 (Tr. 62, 453).

9 Although lack of supporting medical evidence cannot form the sole basis for  
10 discounting pain testimony, it is a factor the ALJ can consider when analyzing  
11 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9<sup>th</sup> Cir. 2005). Subjective  
12 complaints contradicted by medical records and by daily activities are properly  
13 considered. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9<sup>th</sup> Cir.  
14 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9<sup>th</sup> Cir. 2002). Unexplained or  
15 inadequately explained failure to seek treatment diminishes credibility. *Tommasetti*  
16 *v. Astrue*, 533, F.3d 1035, 1039 (9<sup>th</sup> Cir. 2008); Unexplained or inadequately  
17 explained failure to comply with treatment diminishes credibility. *Fair v. Bowen*,  
18 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989).

19 The ALJ's credibility assessment is fully supported by the evidence and free  
20 of harmful error.

1        *B. Medical evidence: Dr. Orr and Ms. Anderson*

2        Plaintiff alleges the ALJ failed to properly credit the opinions of treatment  
3 providers Flint Orr, M.D., and Elizabeth Anderson, PAC. ECF No. 15 at 15-20. The  
4 Commissioner responds that the ALJ appropriately weighed the evidence. ECF No.  
5 20 at 12-18.

6        The Commissioner is correct.

7        On July 5, 2011, Elizabeth Anderson, PAC, completed a form for DSHS. The  
8 record indicates this was the date she initiated care (Tr. 542). She opined work  
9 functioning was impaired, deteriorating and she expected functioning would be  
10 impaired for twelve months. Plaintiff had no postural restrictions but back bending  
11 restricted fine or gross motor skills, worsens plaintiff's condition and increases pain.  
12 Anderson indicates no physical evaluation was performed for her incapacity  
13 evaluation (Tr. 29, referring to Tr. 537-38; 681).

14        The ALJ gave this opinion little weight because Ms. Anderson is not an  
15 acceptable medical source, she did not provide a detailed opinion of plaintiff's  
16 functioning, such as how long she could stand or how much she could lift, and,  
17 although she submitted treatment records with the assessment, the records lacked  
18 any objective findings to support her opinions, such as reports of decreased strength  
19 or positive straight leg raising tests, to support her opinion (Tr. 29).

20        The ALJ is correct. A nonacceptable ("other source") medical source's

1 opinion, such as that of a physician's assistant, may be rejected for germane reasons.  
2 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9<sup>th</sup> Cir. 2012)(citations omitted). An ALJ  
3 may reject any opinion that is brief, conclusory and inadequately supported by  
4 clinical findings. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005). The  
5 ALJ's reasons are germane.

6 Next, in June 2012, three months after back surgery, Anderson gave another  
7 opinion of plaintiff's functioning. She notes lumbar back pain is improving post  
8 surgery, including left leg numbness/pain and depression. Plaintiff needs to lie down  
9 during the day due to pain and fatigue. She is taking several prescribed medications  
10 that cause drowsiness and is completing physical therapy. Ms. Anderson expected  
11 back pain "should improve over the next six months," plaintiff is unable to work "in  
12 the short term" and depression and PTSD are currently well controlled (Tr. 29,  
13 referring to Tr. 681-82). The ALJ notes the PA is "clearly assessing reasonable short  
14 term limitations" related to plaintiff's back surgery, and again, there is no detailed  
15 opinion of plaintiff's functional abilities (Tr. 29). Both are correct.

16 Also in June 2012, Anderson completed a more detailed form describing  
17 plaintiff's functioning. She opined plaintiff can sit for most of the day and walk or  
18 stand for brief periods; lift a maximum of 15 pounds, and frequently carry two  
19 pounds. Training or employment activities are appropriate and limitations are  
20 expected to last twelve months. She is unable to work at this time due to her

1 neurosurgeon's restrictions. Dr. Orr also signed this assessment (Tr. 29, referring to  
2 Tr. 684-87).

3 The ALJ gave some weight to this opinion, finding it contains limitations that  
4 are reasonable during a recovery period expected to last less than twelve continuous  
5 months and shows the treatment provider did not expect plaintiff would be so  
6 functionally limited long-term (Tr. 30).

7 In January 2013 Dr. Orr attached a note to Ms. Anderson's June 2012 opinion  
8 (Tr. 750). He indicated he reviewed the case and Ms. Anderson's recommendations  
9 "with which I concurred; subsequent neurosurgery notes (through October 2012)  
10 substantiated ongoing activity restrictions following lumbosacral surgery" (Tr. 750).

11 The ALJ notes there is no evidence Dr. Orr personally examined plaintiff (Tr.  
12 30). He notes Ms. Anderson's records do not contain more recent objective findings  
13 to continue to support the degree of limitation Dr. Orr endorses, the neurosurgeon's  
14 records report good examination findings, and plaintiff reported she was doing well  
15 engaging in many activities (Tr. 30, 693).

16 The ALJ is correct. As a reviewing physician, Dr. Orr's opinion is entitled to  
17 less weight. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995), as amended (Apr 9,  
18 1996)(the opinion of an examining physician is entitled to greater weight than the  
19 opinion of a nonexamining physician). Four months after surgery, In July 2012,  
20 plaintiff told the treating neurosurgeon's physician's assistant she was doing quite

1 well and feels well (Tr. 717). As the Commissioner accurately points out, she also  
2 did well on examination. ECF No. 20 at 18, referring to Tr. 717. About a month later  
3 plaintiff reported she was taking care of her mother (Tr. 695).

4 The ALJ's reasons are specific, legitimate and supported by substantial  
5 evidence. An ALJ may reject a medical opinion if is brief, conclusory and  
6 inadequately supported by clinical findings. *Bayliss*, 427 F.3d at 1216.

7 As noted, as a non-acceptable source, Ms. Anderson's opinion need only be  
8 rejected by germane reasons. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9<sup>th</sup> Cir. 2012).  
9 Here, the ALJ's reasons are germane. Ms. Anderson's opinion is contradicted by  
10 other evidence, including plaintiff's self-reported activities.

11 *C. Psychological impairments*

12 Plaintiff alleges the ALJ should have found at step two she suffers severe  
13 mental impairments that limit her functioning. ECF No. 15 at 21-24. The  
14 Commissioner responds that, although plaintiff's records show evidence of  
15 psychological impairments, the ALJ correctly determined they were not severe.  
16 ECF No. 20 at 3.

17 An impairment or combination of impairments may be found "not severe only  
18 if the evidence establishes a slight abnormality that has no more than a minimal  
19 effect on an individual's ability to work." *Webb. Barnhart*, 433 F.3d 683, 686 (9<sup>th</sup>  
20 Cir. 2005)(citing *Smolen v. Chater*, 80 F.3d 1273, 1290 (9<sup>th</sup> Cir. 1996). If an

1 adjudicator is unable to determine clearly the effect of an impairment or combination  
2 of impairments on the individual's ability to do basic work activities, the sequential  
3 evaluation should not end with the not severe evaluation step. *Webb*, 433 F.3d at  
4 687, citing S.S.R. No. 85-28 (1985).

5 The ALJ stated:

6 "The claimant's medically determinable impairments of affective disorder,  
7 anxiety disorder and history of substance addictions, considered singly and in  
8 combination, do not cause more than minimal limitation and are therefore  
9 nonsevere. The claimant was also diagnosed with an obsessive compulsive disorder  
10 and antisocial personality features. Similarly, there is no evidence these impairments  
11 significantly limit the claimant's ability to perform basic work activities" (Tr. 24).

12 In 2010 Kathleen Schormann, MHP and a medical doctor (whose signature is  
13 illegible) conducted a DSHS psychological examination. They did not observe  
14 reported symptoms of depression or anxiety. They opined plaintiff had no limitations  
15 in most areas of cognitive and social functioning, with a mild limitation in following  
16 complex instructions and working with the public (Tr. 31). They also opined  
17 plaintiff would only be this limited up to eight months with mental health treatment.  
18 (Tr. 31-32, citing Ex. 1F/24, 12F). The ALJ credited this opinion in part because it is  
19 consistent with plaintiff's ability to engage in a wide range of activities such as  
20 completing a college degree, driving, shopping, cooking and housework (Tr. 32).

1 On March 16, 2011, Roland Dougherty, Ph.D., evaluated plaintiff (Tr. 350-  
2 58). Plaintiff told him she had never had mental health counseling, took Paxil for a  
3 year and it was not helping. She has been clean and sober since 2008. She attends  
4 AA meetings at least three times a week. She had just completed one year at a  
5 community college and earned excellent grades. Her goal was to become a chemical  
6 dependency counselor (Tr. 351-54). Dr. Dougherty diagnosed dysthymia, PTSD,  
7 obsessive compulsive disorder, substance abuse in sustained remission and antisocial  
8 personality features. He opined she should be able to understand, follow and  
9 remember at least simple directions and probably complex directions if not under  
10 much stress (Tr. 357). The ALJ credited this opinion (Tr. 31).

11 Plaintiff alleges the ALJ erred when he found psychiatric symptoms are “not  
12 significantly limiting because Ms. Dixon has not sought more extensive mental  
13 health treatment.” She alleges she did not seek counseling because she lacked  
14 insurance coverage. ECF No. 15 at 22, citing Tr. 24, 443. The ALJ notes plaintiff  
15 testified she has not sought mental health treatment since 2010 (Tr. 24, 69). At the  
16 hearing she did not give a reason for the lack of treatment.

17 Plaintiff alleges the record shows she has significant psychiatric symptoms  
18 resulting from decades of abuse. She cites Tr. 60 (plaintiff’s own testimony);  
19 257(plaintiff’s unreliable self-report); 272 (same); 290 (same).

20 She next cites evaluations at Tr. 311-17 (MSW’s opinion); 317-25 (M.Ed.’s



1 opinion); 326-33 (MSW's opinion). ECF No. 15 at 22. She then cites Tr. 257  
2 (plaintiff's unreliable self-report); 272 (same); 282 (same); 315 (MSW's opinion);  
3 335 (MHP and M.D, quoting plaintiff's description of symptoms); 347 (at a pain  
4 management appointment, plaintiff's description of psychological symptoms); 434  
5 (complains of fatigue and excessive sleepiness, could possibly be related to  
6 metoprolol, depression or hypothyroidism); 453 (again complains of fatigue and  
7 excessive sleepiness, spouse says has never been compliant with prescribed  
8 medication and at this time has been off of medication for a month); 681 (opinion of  
9 a physician's assistant); 695 (same). ECF No. 15 at 23.

10 The ALJ was not required to credit these opinions over those of the examining  
11 sources (Drs. Dougherty and the M.D. who co-signed Ms. Schormann's evaluation).  
12 Nor was he required to credit plaintiff's discredited descriptions of her symptoms.

13 The ALJ is correct that opinions plaintiff suffers psychological limitations are  
14 inconsistent with her demonstrated functioning. She attended college full time,  
15 spending four hours a day at school, earned good grades and did two to three hours  
16 of homework a night from 2009 through 2012 (Tr. 28, 63-64, 356, 434).

17 Plaintiff has not sought mental health treatment since 2010. In 2011 she  
18 reported the antidepressants she has taken for two years have helped her depression  
19 (Tr. 369). She has been noncompliant with taking prescribed medications. All of  
20 these factors fully support the ALJ's determination plaintiff does not suffer a severe

1 mental impairment.

2 The ALJ's reasons for rejecting some opinions are specific, legitimate and  
3 supported by the record. An ALJ may properly reject any opinion that is brief,  
4 conclusory and inadequately supported by clinical findings. *Bayliss v. Barnhart*, 427  
5 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005). Opinions given in formats that provide little  
6 opportunity for the physician to explain the bases of their opinion, such as check-box  
7 forms, are entitled to little weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9<sup>th</sup> Cir. 1996).  
8 Moreover, plaintiff said she did not want to work while she was attending classes  
9 because her grades would drop. She has engaged in a wide range of activities,  
10 including at times caring for her mother who has significant CVD issues and  
11 providing daily transportation for family members (Tr. 28, 336-37, 695). This  
12 indicates much greater ability than alleged.

13 Dixon alleges the ALJ should have weighed the evidence differently, but the  
14 ALJ is responsible for reviewing the evidence and resolving conflicts or ambiguities  
15 in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role  
16 of the trier of fact, not this court, to resolve conflicts in evidence. *Richardson*, 402  
17 U.S. at 400. If evidence supports more than one rational interpretation, the Court  
18 may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at  
19 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> 1984). If there is substantial evidence  
20 to support the administrative findings, or if there is conflicting evidence that will

1 support a finding of either disability or nondisability, the finding of the  
2 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir.  
3 1987).

4 The ALJ's determinations are supported by the record and free of harmful  
5 legal error. Accordingly, it is unnecessary to address plaintiff's credit as true  
6 argument.

### 7 CONCLUSION

8 After review the Court finds the ALJ's decision is supported by substantial  
9 evidence and free of harmful legal error.

### 10 IT IS ORDERED:

11 Defendant's motion for summary judgment, **ECF No. 20**, is **granted**.

12 Plaintiff's motion for summary judgment, ECF No. 15, is denied.

13 The District Court Executive is directed to file this Order, provide copies to  
14 counsel, enter judgment in favor of defendant and **CLOSE** the file.

15 DATED this 23rd day of December, 2015.

16 S/ James P. Hutton

17 JAMES P. HUTTON  
18 UNITED STATES MAGISTRATE JUDGE  
19  
20